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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GINGER GOSS,

Plaintiff ,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security

Defendant.

Civ. No. 08-03029-TC

OPINION AND ORDER

Coffin, Magistrate Judge:

Plaintiff brings this action under 42 U.S.C. §§ 405(g) and 1383(c)(3) for judicial review of a final decision of the Commissioner of Social Security, denying her applications for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-33, and Supplemental Security Income (SSI) disability benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-83f. This court has jurisdiction pursuant to 42 U.S.C. § 405(g).

1 Background

2 Plaintiff filed an application for disability insurance
3 benefits in 2004, alleging disability since 2000 based on chronic
4 depression, post-traumatic stress disorder (PTSD), and short-term
5 memory loss. Plaintiff's application was denied at both the
6 initial and reconsideration stages; in 2007, an ALJ conducted a
7 hearing and issued a decision finding that plaintiff was not
8 disabled as defined under the Social Security Act. The Appeals
9 Council denied review, and plaintiff timely filed a complaint in
10 this court.

11 Plaintiff alleges that the ALJ erred in finding that her
12 medical impairments did not meet medical listing 12.04 (Affective
13 Disorders).

14
15 Standard

16 The burden of proof rest on the claimant to establish
17 disability. Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir.
18 1995). To meet that burden, the claimant must demonstrate an
19 "inability to engage in any substantial gainful activity by
20 reason of any medically determinable physical or mental
21 impairment which can be expected . . . to last for a continuous
22 period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A).
23 The Commissioner bears the burden of developing the record.
24 DeLorme v. Sullivan, 924 F.2d 841, 849 (9th Cir. 1991).

25 This court must affirm the Commissioner's decision if the
26 Commissioner applied proper legal standards and the findings are
27 supported by substantial evidence in the record. 42 U.S.C. §
28 405(g); Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).

1 "Substantial evidence means more than a mere scintilla but less
2 than a preponderance; it is such relevant evidence as a
3 reasonable mind might accept as adequate to support a
4 conclusion." Id.

5 The court must weigh all the evidence, whether it supports
6 or detracts from the Commissioner's decision. Martinez v.
7 Heckler, 807 F.2d 771, 772 (9th Cir. 1986). If the evidence
8 supports the Commissioner's conclusion, the Commissioner must be
9 affirmed; "the court may not substitute its judgment for that of
10 the Commissioner." Edlund v. Massanari, 253 F.3d 1152, 1156 (9th
11 Cir. 2001).

12 13 Disability Analysis

14 The Commissioner has established a five-step sequential
15 process for determining whether a person is disabled. Bowen v.
16 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. § 404.1520. Each
17 step is potentially dispositive. The claimant bears the burden
18 of proof at steps one through four. See Tacket v. Apfel, 180
19 F.3d 1094, 1098 (9th Cir. 1999). The burden shifts to the
20 Commissioner, at step five, to identify jobs existing in
21 significant numbers in the national economy that the claimant
22 can perform. Id.; see also 20 C.F.R. § 404.1560(c)(2). The
23 Commissioner can meet that burden "(a) by the testimony of a
24 vocational expert, or (b) by reference to the Medical-
25 Vocational Guidelines [the Guidelines] at 20 C.F.R. pt. 404,
26 subpt. P, app. 2." Id.

27 Here, at step one, the ALJ found that plaintiff had not
28 engaged in substantial gainful activity since the alleged onset

1 date. Tr. 16; see 20 C.F.R. § 405.1520(b). At step two, the
2 ALJ found that plaintiff had the following severe impairments:
3 depression disorder, anxiety disorder, and substance abuse
4 history in remission. Tr. 16; see 20 C.F.R. § 404.1520(c),
5 416.920(c).

6 However, at step three, the ALJ found that plaintiff's
7 impairments did not meet or medically equal the requirements of
8 a listed impairment. Tr. 16; see 20 C.F.R. §§
9 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii),
10 416.920(d). The ALJ found that plaintiff retained "residual
11 functional capacity" (RFC); however, she was unable to perform
12 heavy or very heavy exertion work, she was restricted to
13 simple, routine tasks, she was to have infrequent interaction
14 with the general public, and she was to avoid hazards such as
15 the operation of machinery. Tr. 17; see 20 C.F.R. §§
16 404.1520(a)(4)(v), 404.1520(g), 416.920(a)(4)(v), 416.920(g).

17 At step four, the ALJ found that plaintiff was unable to
18 perform any past relevant work. Tr. 19; see 20 C.F.R. §§
19 404.1520(a)(4)(iv), 404.1520(f), 416.920(a)(iv), 416.920(f).
20 At step five, relying on the testimony of a vocational expert,
21 the ALJ found that there are jobs that exist in significant
22 numbers in the national economy that plaintiff can perform,
23 such as blind stitch machine operation or assembly of small
24 products. Tr. 20; see 20 C.F.R. §§ 404.1520(a)(4)(v),
25 404.1520(g).

26 Therefore, the ALJ concluded that plaintiff had not been
27 disabled, as defined under the Social Security Act, from March
28 31, 2000 to the date of the ALJ's decision. Tr. 20. Plaintiff
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1 disputes the ALJ's finding at step three.

2
3 Discussion

4 I. The ALJ properly found that Goss's impairments did not
5 meet or medically equal the requirements of a listed
6 impairment.

7 Plaintiff bears the burden of proving that she has an
8 impairment that meets or equals the criteria of a listed
9 impairment. 20 C.F.R. pt. 404, subpt. P, app. 1 (the
10 Listings); Burch v. Barnhart, 400 F.3d 676, 683 (9th Cir.
11 2004). Plaintiff did not prove that her impairments met or
12 equaled those criteria.

13 The Listings describe impairments which are considered
14 severe enough to prevent a person from performing gainful
15 activities. 20 C.F.R. §§ 404.1525, 416.925. Plaintiff asserts
16 that she met the requirements of Listing 12.04 (Affective
17 Disorders). Specifically, plaintiff contends that the medical
18 evidence established an inability to function and met the "C"
19 criteria of Listing 12.04.

20 In general, section 12.00 of Appendix 1 (Mental Disorders)
21 addresses the evaluation of mental impairments in nine
22 diagnostic categories. Except for mental retardation and
23 substance abuse addiction disorders, each section consists of a
24 statement describing the disorder, "A" criteria (a set of
25 medical findings), and "B" criteria (a set of impairment-
26 related functional limitations measuring the degree of
27
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1 severity)¹. There are also C criteria, or "functional"
2 criteria, for some disorders, including affective disorders
3 such as plaintiff's. Overall, the impairment criteria are met
4 if the diagnostic description and the criteria of both
5 paragraphs A and B or A and C are met. The ALJ found that
6 there was no evidence on the record of the severity required by
7 the B or C criteria.

8
9 A. Goss's Testimony

10 Goss testified that she was 42 years old and had not
11 worked since 2000 due to depression, PTSD, ADD, and chronic
12 pain.² Tr. 410. She was living in California at the time of
13 the hearing. Tr. 416. She had just gotten custody of her son
14 after he was removed from the home after his father physically
15 abused him. She had an older son who was 17 at the time and
16 not living with her. Goss and her husband had been in an
17 abusive relationship for several years, divorcing and
18 remarrying at least once. At the time of the hearing, they
19 were still married but not living together. Tr. 411. Goss
20 testified that she had a modified high school diploma. Tr.
21 421.

22
23

24 ¹ Those criteria are activities of daily living; social
25 functioning; concentration, persistence, or pace; and episodes of
26 decompensation. 20 C.F.R. pt. 404, subpt. P, app. 1, 12.00C. They
27 are met when at least two of the following are met: marked limitations
in activities of daily living; marked limitations in social
functioning; marked limitations in concentration, persistence, or
pace; or repeated episodes of decompensation.

28 ² Goss testified that she had a broken leg that had gone
untreated for 13 years. Tr. 410. Nothing in the medical evidence
supports that contention.

1 Goss testified that she was raising her nine-year-old son
2 by herself, cooking for him and playing with him when he was
3 not in school, and transporting him to and from school when it
4 was in session. While he was at school, she watched television
5 all day. She testified that she did not sleep well and took
6 medication to help her sleep, but that it was not working well.
7 Tr. 412. She said that her house was a mess because she had
8 panic attacks. Tr. 413. The attacks kept her from leaving the
9 house except to check on her son while he was playing outside
10 or to take him to school. Tr. 413. She testified that her
11 depression had gotten worse with age, and that she had been in
12 counseling for the last two years. Tr. 414. Although she had
13 been addicted to alcohol, used methamphetamine and other drugs,
14 she had been sober since 2002. Tr. 415.

15 When asked why she was unable to work if she could take
16 care of her son, Goss testified that she could not "handle two
17 things, that's like two major jobs at once and I can't handle
18 both of them." Tr. 415. When she last worked in 2000, she
19 commuted and her mother helped her with daily chores. Tr. 415.
20 She testified that her racing thoughts and anxiety made life
21 stressful, and she did not foresee herself having the ability
22 to work in the future. Tr. 416.

23 The ALJ asked Goss how she had traveled to the hearing in
24 Klamath Falls (a distance of 98 miles), and she stated that she
25 had driven herself. Tr. 417. She testified that it was
26 "nerve-racking." Tr. 417. When asked about her broken leg,
27 Goss testified that an x-ray had revealed the existence of a
28 small fracture, and that it hurt to walk. Tr. 419-20. She

1 stated that it hurt to wear high heels or to stand for long
2 periods of time. Tr. 420.

3 The ALJ found, based in part on Goss's own testimony, that
4 she had been capable of making successful adjustments to other
5 work in the past. The ALJ noted that, in Goss's written
6 statements, she reported that her daily activities included
7 driving her son to school and returning home to plan the day
8 depending on what needed to be done. Tr. 18; Ex. 11E. He
9 found that Goss reported that her depression, lack of
10 motivation, and anxiety made her feel numb most of the day, and
11 that her depression was getting worse. Tr. 18. However, the
12 ALJ noted that Goss reported watching television, listening to
13 the radio, and "goof[ing] around on the computer" while her son
14 was at school. Tr. 18. She was able to help him with
15 homework, do household chores, prepare meals, help with
16 bathing, and read to him each evening. Tr. 18. The ALJ noted
17 that she had testified about her inability to maintain her own
18 hygiene due to lack of motivation and depression. Tr. 18.

19
20 B. Vocational Expert's Testimony

21 Frances Summers, a vocational expert, testified that Goss
22 had worked as a telemarketer, food sales clerk, general office
23 clerk, cashier, data entry clerk, front desk receptionist, and
24 public interviewer. Tr. 422-23. All were semi-skilled or
25 unskilled sedentary jobs. Tr. 423. The ALJ questioned the
26 vocational expert about those jobs that Goss could still be
27 expected to perform, noting that although she was literate, she
28 probably could not perform heavy work or work with complex

1 tasks. Tr. 423. The ALJ also stated that he would rule out
2 work with frequent interaction with the public, or work with
3 machinery. The expert testified that the general office clerk
4 or a back office position would be feasible. Tr. 423.
5 However, because that was not "simple, routine type work," they
6 may be too complicated. Tr. 424. The expert testified that
7 Goss could still perform several jobs, including blind stitch
8 machine operator, a light job requiring no skill, of which
9 there were 115,000 in the national economy and 1,700 in the
10 region, and assembler of small products, an unskilled light job
11 of which there were 500,000 in the national economy and 7,500
12 in the region. Tr. 425. When asked by Goss's attorney if
13 those jobs could be performed by "somebody who misses work even
14 two days or three days a week," the vocational expert said no.
15 Tr. 425.

16
17 C. The Medical Evidence

18 The ALJ stated that the medical evidence indicated that
19 Goss had "impairments that are severe within the meaning of the
20 Regulations." However, he found that those impairments, both
21 severe and non-severe, singularly and in combination, were not
22 accompanied by the findings specified for any impairment or
23 combination of impairments included in any section of the
24 Listings. Tr. 16. He noted that "[n]o treating or examining
25 physician mentioned findings equivalent in severity to the
26 criteria of any listed impairment [in 12.00-mental disorders]."
27 Tr. 16.

28 The ALJ discussed the medical evidence in detail. In
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1 2004, clinical psychologist Jane Starbird, PhD, completed a
2 comprehensive psycho-diagnostic evaluation and noted the Goss
3 had no history of psychiatric hospitalizations, and was taking
4 Remeron, trazadone, Wellbutrin, and ibuprofen. Tr. 182. She
5 had reported seeing a counselor and last using alcohol and
6 drugs in 2002. Tr. 182. Her mood was poor and depressed, her
7 social skills were moderate, her thought processing poorly
8 organized, her insight good, her judgment deemed moderate or
9 poor, she was oriented in all three spheres, and there were
10 overall no gross indications of memory impairment. Tr. 183-84.
11 Dr. Starbird diagnosed PTSD, dysthymic disorder, and alcohol
12 dependence in full remission. Tr. 184.

13 Plaintiff sought counseling again in 2005-07 with
14 Lifeworks. Tr. 276-82, 296-375. At intake, the therapist
15 assessed major depressive disorder, recurrent, mild; PTSD; and
16 alcohol dependence in full remission. Tr. 375. The therapist
17 assigned a Global Assessment of Functioning (GAF)³ score of 60.
18 Tr. 375. Previously, in 2004-05, Goss had been assigned GAF
19 scores of 53 and 54 at another community health organization,
20 and a GAF score of 60 in 2007 from a county mental health
21 clinic. Tr. 192-214, 208, 211, 285-86. At that 2007 visit, a
22 medical doctor assessed bipolar disorder II, PTSD, and alcohol
23 dependence. Tr. 283-95.

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26 ³ The GAF score describes psychological, social, and occupational
27 functioning. A score of 51 to 60 indicates moderate symptoms or
28 moderate difficulty in functioning, A score of 61 to 70 indicates
some mild symptoms or some difficulty, but generally adequate
functioning. Am. Psychiatric Ass'n, Diagnostic & Statistical Manual
of Mental Disorders 32-34 (4th ed. Text Revision 2000) (DSM-IV-TR).

1 D. The ALJ's Findings

2 The ALJ found that the B criteria (impairment-related
3 functional limitations measuring the degree of severity) were
4 not met. Again, those criteria are activities of daily living;
5 social functioning; concentration, persistence, or pace; and
6 episodes of decompensation. 20 C.F.R. pt. 404, subpt. P, app.
7 1, 12.00C. They are met when at least two of the following are
8 met: marked limitations in activities of daily living; marked
9 limitations in social functioning; marked limitations in
10 concentration, persistence, or pace; or repeated episodes of
11 decompensation.

12 The ALJ found evidence of "moderate" symptoms, tr. 19,
13 while finding Goss's depression and anxiety to be severe
14 impairments. "Severity" is measured according to functional
15 limitations, using the four B criteria. The ALJ found that
16 Goss had mild restrictions in activities of daily living,
17 moderate difficulties in maintaining social functioning,
18 moderate difficulties in maintaining concentration, persistence
19 or pace, and no episodes of decompensation. Tr. 17. The ALJ
20 therefore found that the B criteria were not met.

21 The ALJ also found that the C criteria were not met. The
22 C criteria in Listing 12.04 are a "[m]edically documented
23 history of a chronic affective disorder of at least 2 years'
24 duration that has caused more than a minimal limitation of
25 ability to do basic work activities, with symptoms or signs
26 currently attenuated by medication or psycho-social support."
27 One of the following is also required: (1) repeated episodes of
28 decompensation, each of extended duration; (2) a residual

1 disease process that has resulted in such marginal adjustment
2 that even a minimal increase in mental demands or change in the
3 environment would be predicted to cause decompensation; or (3)
4 a current history of one or more years' inability to function
5 outside a highly supportive living arrangement, with indication
6 of a continued need for such arrangement. Plaintiff argues
7 that she meets both (2) and (3).

8 Plaintiff points to no evidence showing a condition of the
9 severity required by C(2), that a minimal increase in mental
10 demands or environmental change would be predicated to cause
11 decompensation). "Episodes of decompensation" are
12 "exacerbations or temporary increases in symptoms or signs
13 accompanied by a loss of adaptive functioning," giving rise to
14 difficulties performing daily life activities, maintaining
15 social relationships, concentration, persistence, or pace. 20
16 C.F.R. pt. 404, supt. P, app. 1, 12.00C.4. Episodes must be
17 severe enough to require increased treatment or a less
18 stressful situation. Id. Episodes of decompensation may be
19 "inferred from medical records showing significant alterations
20 in medication" or documentation of the need for a more
21 structured support system (hospitalizations, for example) or
22 other relevant information on record about the existence,
23 severity, and duration of the episode. Id.

24 The medical evidence, plaintiff's reports of functioning,
25 and her husband's report, as discussed by the ALJ, do not
26 contain evidence of episodes of decompensation. Plaintiff was
27 able to drive her son to and from school, perform household
28 chores, and read. There is no evidence in the record of

1 hospitalizations. The plaintiff's husband reported that she
2 took care of the children, cooked, cleaned, and shopped for the
3 household. Tr. 18. She did laundry, ironed, sewed, and
4 gardened. Tr. 18. She required reminding to get tasks
5 accomplished and took medication to sleep at night. Tr. 18.
6 There is simply no evidence in the record of any loss in
7 adaptive functioning as required under the definition of
8 decompensation.

9 The evidence likewise does not show a history of the
10 inability to function outside of a highly supportive living
11 arrangement as required by C(3). The ALJ found that no
12 treating or examining medical source mentioned findings severe
13 enough to satisfy the B or C criteria. The reviewing
14 psychologist for the state found that the evidence did not
15 establish that the B or C criteria were met. Tr. 264-65. At
16 the reconsideration state, another reviewing psychologist
17 affirmed those findings. Tr. 270.

18 The plaintiff does not dispute the ALJ's findings at step
19 five, that there are jobs that exist in significant numbers in
20 the national economy that plaintiff can perform, such as blind
21 stitch machine operation or assembly of small products. Tr.
22 20; see 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g). However,
23 the ALJ's discussion of that issue supports the finding that
24 plaintiff is not disabled at step three. Dr. Starbird stated
25 that the plaintiff's substance abuse problems had interfered
26 with her ability to work; however, it was noted that she had no
27 history of psychiatric hospitalizations and no history of
28 suicide attempts. Tr. 17. The ALJ found that she had

1 "residual functional capacity" and had been sober since 2002.
2 Tr. 19.

3 The ALJ's finding that plaintiff did not prove disability
4 at step three pursuant to either the B or C criteria, or a
5 combination thereof, is supported by substantial evidence in
6 the record.

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8 Conclusion

9 For the foregoing reasons, the ALJ's determination was
10 based on the proper legal standard and supported by substantial
11 evidence. The Commissioner's final decision is AFFIRMED and
12 the case is DISMISSED.

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19 Dated this 29 day of January, 2009.

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25 THOMAS M. COFFIN

26 United States Magistrate Judge
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